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Attorneys for Federal Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

CROW INDIAN TRIBE *et al.*,

Plaintiffs,

vs.

UNITED STATES OF AMERICA, *et al.*,

Federal-Defendants,

and

STATE OF WYOMING, *et al.*,

Defendant-Intervenors.

CV 17-89-M-DLC

(Consolidated with Case Nos.

CV 17-117-M-DLC

CV 17-118-M-DLC

CV 17-119-M-DLC

CV 17-123-M-DLC

and CV 18-16-M-DLC)

**BRIEF IN SUPPORT OF
MOTION TO FILE A
CONSOLIDATED
OPPOSITION TO
PLAINTIFFS' MOTIONS
FOR ATTORNEYS'
FEES AND COSTS**

*Expedited Hearing
Requested*

Two sets of Plaintiffs ask the Court to award them substantial attorneys' fees and costs for work completed when litigating these consolidated cases. *See ECF 341, 343.* Both motions pertain to the same litigation and present overlapping arguments and issues. For efficiency and economy reasons, Federal Defendants ask the Court's permission to file a consolidated opposition to the motions for attorneys' fees that is no longer than would be allowed if they filed separate briefs—13,000 words or less. In support, Federal Defendants state as follows:

1. The Court stated that consolidating these proceedings was needed “so that the business of the court may be dispatched with expedition and economy while providing justice to the parties.” ECF 34 at 2 (quoting Wright & A. Miller, *Federal Practice and Procedure*, § 2381 (1971)). The Court also identified “an interest in not receiving the same briefs on the same subject.” ECF 40 at 2.

2. Northern Cheyenne Tribe, et al. (CV 17-119-M-DLC) and WildEarth Guardians (CV 17-118-M-DLC) recently filed motions for attorneys' fees and costs. *See ECF 341, 343.* Plaintiffs' arguments, billing records, and other evidence address the same legal issues and relate to the work performed in these consolidated cases. *See ECF 342,*

344-346. Both motions thus present overlapping arguments, proffer similar testimonial evidence, and address the same underlying consolidated proceedings.

3. Federal Defendants could present separate briefs responding to the attorneys' fees motions, where each opposition brief could contain up to 6,500 words. *See* ECF 330 at 1-2 (government's "responses" due by February 26, 2021); L.R. 7.1(d)(2)(A) (applicable page limits). Combined, Federal Defendants could file 13,000 words in opposition to the two motions. But doing so would result in duplication and inefficiencies, which is why Federal Defendants propose to file a single brief that streamlines presentation of the issues and argument.

4. Plaintiffs oppose, arguing that Federal Defendants can file two opposition briefs containing 13,000 words but must limit a consolidated opposition brief to 9,750 words. Plaintiffs did not, and likely cannot, identify any prejudice from the government filing one consolidated brief.

5. To be sure, Federal Defendants expect to file a brief containing fewer than 13,000 words and are working toward that objective. But they have not prepared their opposition brief and cannot

say exactly how many words they require at this time. Federal Defendants disagree with Plaintiffs that they should sacrifice efficiencies gained by preparing a single brief simply because they do not know at the outset the ultimate number of words needed.

Federal Defendants' request seeks to facilitate the Court's resolution of Plaintiffs' motions. While Plaintiffs oppose the motion, the request is neither prejudicial to Plaintiffs nor novel. *See* ECF 178 at 3 (allowing Federal Defendants to file a single consolidated brief of 13,000 words). If the Court believes a consolidated opposition brief would facilitate its review, it should grant Federal Defendants' motion to file a single consolidated opposition brief containing no more than 13,000 words.

Dated February 5, 2021

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CERTIFICATE OF COMPLIANCE

The attached brief is proportionately spaced, has a typeface of 14 points and contains fewer than 6500 words, excluding the caption, tables, and certificates of service and compliance.

/s/ Michael R. Eitel
MICHAEL R. EITEL
U.S. Department of Justice

CERTIFICATE OF SERVICE

I certify that the foregoing was electronically filed with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the attorneys of record.

/s/ Michael R. Eitel
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U.S. Department of Justice